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DOUG DREWRY

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DOUG DREWRY,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY; and  
DOES 1 through 10, inclusive,

Defendants.

**Case No.**

**COMPLAINT FOR DAMAGES,  
EQUITABLE AND/OR INJUNCTIVE  
RELIEF**

VIOlations OF THE FAIR LABOR  
STANDARDS ACT, 29 U.S.C. § 215;  
VIOlations OF CALIFORNIA LABOR  
CODE §§ 201 ET SEQ; CONCEALMENT;  
PROMISSORY ESTOPPEL AND BREACH  
OF IMPLIED CONTRACT

**JURY TRIAL DEMANDED**

1 Plaintiff DOUG DREWRY complains and alleges as follows:

2 **PARTIES AND JURISDICTION**

3 1. Plaintiff DOUG DREWRY (“Plaintiff”) is, and at all relevant times hereto, has  
4 been a resident of the State of California.

5  
6 2. Plaintiffs are informed and believe and thereby allege that Defendant HEWLETT-  
7 PACKARD COMPANY (“Defendant” or “HP”) is a corporation whose principal place of  
8 business is located in this judicial district within the State of California.

9  
10 3. At all relevant times, Defendant HP was an employer for purposes of the  
11 California Labor Code, as well as the Fair Labor Standards Act (“FLSA”), and employed Plaintiff  
12 within the State of California.

13  
14 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
15 Sections 1331 and 1367, in that Plaintiff is asserting federal claims, including violations of the  
16 FLSA, and the Court has supplemental jurisdiction over Plaintiff’s state law claims, in that they  
17 arise from the same common nucleus of operative facts.

18  
19 5. Venue is proper in the Northern District of California, in that Defendant HP  
20 maintains its principal place of business in this judicial district.

21  
22 6. Plaintiff is unaware of the true identity, nature and capacity of each of the  
23 Defendants designated herein as a DOE, whether individual, corporate, associate or otherwise,  
24 who therefore sues such defendants by fictitious names pursuant to California Code of Civil  
25 Procedure §474. Plaintiff is informed and believes and thereby alleges that each of the  
26 Defendants designated herein as a DOE is in some manner responsible for the damages and  
27 injuries as are alleged in this Complaint. Upon learning the true identity, nature and capacity of  
28

1 the DOE Defendants, Plaintiff will amend this Complaint to allege their true names and  
2 capacities.

3  
4 7. Unless otherwise indicated as acting in individual capacity, Plaintiff is informed  
5 and believe, and thereby allege that each of the Defendants herein were at all times relevant  
6 hereto, the agents, representatives, servants and employees of the remaining Defendants, and  
7 were acting at least in part within the course and scope of such relationship, and that the wrongful  
8 acts alleged herein were committed by such Defendants, and each of them.

9  
10 **FACTUAL BACKGROUND**

11 8. Plaintiff Doug Drewry was a former employee of Defendant HP. Defendant hired  
12 Plaintiff back on August 1, 2011, as part of HP's purchase of Vertica Systems, Inc. Defendant  
13 hired Plaintiff as a Sales Account Manager, whose primary job duties and responsibilities  
14 included the selling of Vertica software systems to business clients, as well as meeting a quota for  
15 the sale of support services. Plaintiff performed his job duties and responsibilities in an  
16 outstanding manner, always meeting or exceeding his sales goals and quotas, and Plaintiff's  
17 immediate manager, Chris Matthews, rated Plaintiff as "Exceeds Expectations" on his  
18 performance evaluations. In short, Plaintiff was one of the highest performing sales executives  
19 on the Americas Vertica team.

20  
21 9. Plaintiff's base salary was \$162,000.00, along with sales commissions and  
22 incentives at a weighted amount, and addition incentives if Plaintiff met his annual quotas in the  
23 sale of Vertica products, as well as first year support services. Plaintiff consistently met or  
24 exceeded all of his sales requirements. For example, in the year 2012, Plaintiff's gross pay was  
25 over \$540,000.00.

1           10. Plaintiff was employed pursuant to a sales incentive plan, which was governed by  
2 the Sales Letter issued to Plaintiff. Under the Sales Letter, Plaintiff was entitled to incentive pay,  
3 and commissions for the sale of Vertica software and support services, above and beyond his base  
4 salary.

5  
6           11. As part of his employment with HP, Plaintiff was assigned to, and developed  
7 DreamWorks Animation (“DreamWorks”), as a potential client. When Plaintiff had worked for  
8 Vertica Systems, Inc., he began contacting and negotiating with DreamWorks as a potential client  
9 as early as April 2010. When HP purchased Vertica in 2011, Plaintiff’s business manager, Mr.  
10 Matthews encouraged Plaintiff to continue to pursue DreamWorks as a potential client, as it was a  
11 large corporate client that could bring in a substantial amount of revenue for HP. As a result,  
12 Plaintiff continued to devote a significant amount of his time making attempts to close a business  
13 deal with DreamWorks.

14  
15           12. From 2011 until 2013, Plaintiff dedicated the vast majority of his time in  
16 attempting to secure DreamWorks as a Vertica software client for HP. Plaintiff expended  
17 hundreds, if not thousands of hours trying to close the DreamWorks deal. Plaintiff devoted this  
18 significant amount of time to close the DreamWorks deal at the expense of his family, his  
19 personal life, as well as the other potential business he could have secured at HP.

20  
21           13. In November 2012, Plaintiff approached his manager, Mr. Matthews, so that he  
22 could discuss the DreamWorks deal. During that discussion, Plaintiff asked for Mr. Matthews to  
23 confirm that HP would provide Plaintiff with the full incentive pay and commissions on the  
24 DreamWorks deal, even though it was taking some time to develop. Most other smaller  
25 companies took Plaintiff about four (4) weeks to develop, from a sales perspective, but the  
26 DreamWorks deal was taking more than a year. Mr. Matthews again confirmed that Plaintiff  
27 would be entitled to his “full commissions” and incentive pay, if Plaintiff was able to secure the  
28

1 DreamWorks deal. Mr. Matthews expressly advised Plaintiff that HP would honor the Sales  
2 Letter. In fact, Mr. Matthews told Plaintiff that he would obtain the DreamWorks commission  
3 and incentive pay, and, if the company refused to provide it, Plaintiff would have solid grounds in  
4 which to take legal action. Based upon those representations, Plaintiff continued to work as hard  
5 as possible to help secure the DreamWorks deal, putting in countless hours of time, at the direct  
6 expense of his family, as well as other potential business that could have provided him with  
7 significant incentive or commission income.

8  
9 14. After a significant amount of work, spanning months and years, the DreamWorks  
10 deal was set to formally close in June 2013. The deal was valued well in excess of \$3 million,  
11 and would constitute a major portion of Plaintiff's overall earnings. The deal was done, Plaintiff  
12 had completed all the work required to close the deal, and the parties were ready to close.

13  
14 15. On May 6, 2013, HP issued a "memo" to Plaintiff advising him that "HP has  
15 determined that it will not provide sales credit or incentive pay" to Plaintiff for the DreamWorks  
16 transaction. Plaintiff was visibly shocked.

17  
18 16. Plaintiff made an immediate internal complaint to his manager, Mr. Matthews,  
19 citing the Sales Letter as the basis for Plaintiff's rightful compensation.

20  
21 17. In response, on or about July 23, 2013, approximately one month after the  
22 DreamWorks deal closed, Defendant HP issued Plaintiff an "amended" Sales Letter, which  
23 altered the terms and conditions of his employment and compensation, retroactively, and  
24 implicitly admitted that HP should have paid Plaintiff the proper compensation for the  
25 DreamWorks deal, when it closed. Plaintiff continued to make internal complaints about the  
26 amended sales letter, but Defendant failed to adequately or reasonably investigate Plaintiff's  
27 internal complaints, leaving Plaintiff in an uncertain state for several months.

1           18. As a direct result of HP's refusal to provide Plaintiff with his lawful compensation,  
2 Plaintiff was constructively terminated on or about November 25, 2013.

3  
4                                   **FIRST CAUSE OF ACTION**

5                                   (Violations of the FLSA – 29 U.S.C. Section 215 – All Defendants)

6           19. Plaintiff realleges and incorporates by reference Paragraphs 1 through 18 of this  
7 Complaint as though fully set forth herein.

8  
9           20. The anti-retaliation of the Fair Labor Standards Act, 29 U.S.C. Section 215,  
10 prohibits an employer from retaliating or discriminating against an employee for making internal  
11 complaints pertaining to the compensation statutes, including commission or incentive pay.

12  
13           21. Defendant HP violated this provision of the FLSA with regard to Plaintiff when it  
14 failed to properly pay Plaintiff his owed compensation, after internal complaints, and then  
15 constructively terminated Plaintiff's employment. .

16  
17           22. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered  
18 damages in an amount to be proven at trial.

19  
20           23. Defendant's conduct is properly characterized as "willful," and, as a result,  
21 Defendant is liable for liquidated damages.

22  
23                                   **SECOND CAUSE OF ACTION**

24                                   (Violations of California Labor Code – Failure to Pay all Wages Owed, Waiting Time Penalties  
25 – All Defendants)

26           24. Plaintiff incorporates herein by reference all of the allegations contained in  
27 paragraphs 1 through 23 of this Complaint as fully set forth herein.

1           25.     California Labor Code Sections 201, 202, 203, 204, 218, 223, 226, 510, and the  
2 applicable California Industrial Commission Wage Orders, require that Defendant pay all wages  
3 owed, compensate employees as promised for work performed, provide itemized wage statements  
4 that accurately reflect the wages owed, and provides for waiting time penalties, as well as other  
5 relief, for the violations of these provisions.

6  
7           26.     In acting above, Defendants violated the California Labor Code in failing to  
8 compensate Plaintiff for all wages, commissions, and incentive pay owed.

9  
10          27.     Plaintiff has made repeated demands for the payment of his wages, but Defendants  
11 have refused.

12  
13          28.     As a direct and proximate result of Defendants' unlawful conduct, Plaintiff seeks  
14 damages in an amount to be proven at trial.

15  
16                   **THIRD CAUSE OF ACTION**

17                   (Fraud/Concealment – All Defendants)

18          29.     Plaintiff incorporates herein by reference all of the allegations contained in  
19 paragraphs 1 through 28 of this Complaint as fully set forth herein.

20  
21          30.     In acting above, Defendants concealed material information from Plaintiff during  
22 the period of time that he was working on the DreamWorks project. Plaintiff is informed and  
23 believes that Defendant HP knew that it was not going to provide Plaintiff with the promised  
24 DreamWorks compensation and incentive pay for months, if not years, prior to the closing of the  
25 DreamWorks' deal, but Defendant knowingly and intentionally concealed this material  
26 information, with false promises that Plaintiff would obtain this compensation that was owed to  
27  
28

1 him. Defendant concealed this information with the intent to induce Plaintiff to continue to the  
2 work on the DreamWorks' deal until the moment it was ready to close.

3  
4 31. Plaintiff reasonably relied upon this information in continuing to dedicate his time,  
5 effort, and life to closing the DreamWorks' deal. Had Plaintiff know the true facts surrounding  
6 Defendant HP's intent to provide the compensation, he would not have continued to dedicate his  
7 time, effort, and life to the deal.

8  
9 32. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered loss  
10 of employment, indignity, great humiliation and emotional distress manifesting in physical  
11 symptoms.

12  
13 33. Defendant's actions have caused and continue to cause Plaintiff substantial losses  
14 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
15 other employment benefits, lost wages, attorneys' fees, future earnings and benefits, cost of suit,  
16 humiliation, embarrassment and anguish, in an amount according to proof.

17  
18 34. The acts of the Defendant as alleged herein, were intentional, outrageous,  
19 despicable, oppressive, fraudulent, and done with ill will and intent to injure Plaintiff and to cause  
20 mental anguish, anxiety, and emotional distress. The acts of the employer Defendant were further  
21 committed by managing agents, officers, and/or directors of the Defendant, or ratified by the  
22 Defendant. The Defendant's acts were done in conscious disregard of the risk of severe  
23 emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud,  
24 malice under California Civil Code §3294, entitling plaintiff to punitive damages.



**FOURTH CAUSE OF ACTION**

(Promissory Estoppel/Implied Contract – All Defendants)

35. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 34 of this Complaint as fully set forth herein

36. In acting above, Defendant HP made promises to Plaintiff to provide certain commissions for the DreamWorks' deal.

37. Plaintiff reasonably relied upon those promises, which were repeated throughout the time that Plaintiff worked on the DreamWorks' deal, including promises from Mr. Matthews, Plaintiff's manager. Absent such promises, Plaintiff would have not elected to devote his time, effort, and life to the DreamWorks' deal.

38. Defendant HP knew or reasonably should have known that Plaintiff had a reasonable expectation to his full commissions and wages on the DreamWorks' deal.

39. As a result, Plaintiff dedicated a significant amount of his available time to close the DreamWorks' deal for Defendant HP, thereby creating an implied contract.

40. Defendant HP breached the implied agreement, and it breached its promises to Plaintiff, after Plaintiff performed all the work required to close the DreamWorks' deal.

41. As a result, Plaintiff is entitled to damages and/or equitable relief, in an amount to be proven at trial.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For prejudgment interest in an amount according to proof;
4. For punitive damages in an amount according to proof;
5. For equitable and/or injunctive relief;
6. For statutory penalties, including liquidated damages;
7. For reasonable attorney's fees and cost of suit therein;
8. For such other and further relief as the court may deem proper.
9. **Plaintiffs demand a trial by jury.**

Dated: October 28, 2015

BROWN | POORE LLP

By: //s// David M. Poore

David M. Poore  
Attorneys for Plaintiffs